THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 1544 OF 1998

DATED: 22-09-2005

Between

MEDWIN HOSPITALS (A Division of Jaya
Diagnostic and Research Centre Limited),
Nampally, Hyderabad, rep., by its M.D., B.K. Rao.

..... PETITIONER

And

1. The Director General of Health Services,
Nirman Bhavan, New Delhi and others.

..... RESPONDENTS

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ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner, Medwin Hospitals (a division of M/s. Jaya Diagnostic and Research Centre Limited) invoked the jurisdiction of this Court under Article 226 of the Constitution of India and filed the present writ petition challenging the order dated 25-11-1997 issued by the 1st respondent – the Director General of Health Services, Nirman Bhavan, New Delhi.

The 1st respondent found that M/s. Jaya Diagnostic Research Centre Limited, Hyderabad is only a diagnostic center, not having indoor patient facilities and therefore, does not fulfil the conditions for availing and retaining CDECs issued to it. In the said proceedings, there is a reference to the show cause notice dated 16-07-1997 stated to have been issued as against the petitioner providing an opportunity to show cause as to why CDECs issued to it for import of the equipments whose details are mentioned in the said order should not be withdrawn. The main ground of

challenge is that the impugned order is contrary to the policy of the Government of India spelt out through notification

No. 64/88 dated 01-03-1988. However, it was specifically pleaded that Medwin Hospitals is a division of M/s. Jaya Diagnostic and Research Centre Limited and the same has been established in the year 1990. The hospital is a 400 bed super speciality hospital having various facilities treating out-patients and in-patients since the date of establishment. The Government of India in order to provide medical care issued notification No. 64/88 dated

01-03-1988 granting exemption from payment of customs duty on the sophisticated medical equipments imported from other countries. It exempted all equipments, apparatus, appliances including spare parts and accessories thereof but excluded consumable items. The Central Government recognized the petitioner for the purpose of benefits under the Health Scheme on 16-01-1992 and so also the State Government on 23-12-1988.

A detailed counter affidavit has been filed supporting the impugned order. This Court in its Order dated 18-06-2002 framed the following question for its consideration:

> "……the whole question revolves around the interpretation of the policy enunciated under the Notification No. 64/88, dt. 1.3.1988. This question has already come up before the various High Courts and also before the Supreme Court on occasions more than one".

This Court found that "the exemption had been granted to Jaya Diagnostic & Research Centre Ltd. and it has been withdrawn from it. Medwin hospital has nowhere been in picture right from 1988 to 1997. This writ petition is liable to be dismissed on this count alone. The other grounds which related to the interpretation of the notification No. 64/88, dt. 1.3.1988 will have to be gone into while considering the import of that notification and would be dealt with after the facts relating to other writ petitions are discussed". This Court ultimately dismissed the writ petition.

It is required to notice that the present writ petition was heard along with other writ petitions in a batch and disposed of by a common order. Aggrieved by the orders

passed by this Court, the petitioner carried the matter to the Supreme Court in S.L.P (Civil) No. 19621 of 2002. That a rejoinder affidavit was filed by the petitioner in response to the notice issued by the apex Court limited to the question as to why the matter should not be remanded to this Court for determination as to whether Medwin Hospital is the division of M/s. Jaya Diagnostic and Research Centre Limited. In the said rejoinder affidavit is has been specifically pleaded that Medwin Hospital "is a part and parcel of Jaya Diagnostic & Research Centre Ltd., and it is only through this institution, the Health care activity of Jaya Diagnostic & Research Centre Ltd., are carried out from the beginning till today which fact is known to CGHS, customs dept., Income Tax Dept., most of the public sector undertaking located in A.P. etc". There is a reference to various proceedings including the orders passed under the provisions under the provisions of the Income Tax Act, 1961 in support of the plea that from the inception the audit balance sheets of M/s. Jaya Diagnostic and Research Centre Limited show the name of Medwin Hospitals (a division of M/s. Jaya Diagnostic and Research Centre Limited) and the same is stated to have been filed before the financial institutions like IFCI, IDBI, ICICI, Income Tax Department and nationalized banks etc.

The apex Court vide its order dated 04-08-2003 while disposing of the S.L.P passed the following order:

> "Leave granted.
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> Notice was issued limited to the question as to why the matter should not be remanded to the High Court for determination as to whether Medwin Hospital, the appellant before us is the Division of Jaya Diagnostice & Research Center Limited. Learned Additional Solicitor General appearing on behalf of the respondents has fairly conceded that this issue may be remanded back for determination to the High Court but the consequences of such finding will be open for arguments. The appeal is disposed of in these terms".

That is how the matter is placed before this Court once again for the purposes of disposal of the writ petition. That during the course of hearing of this writ petition, the petitioner placed several documents before us in support of the plea that Medwin

Hospitals is the division of M/s. Jaya Diagnostic and Research Centre Limited. The fact remains that before the impugned order dated 27-11-1997 is passed, the petitioner did not raise this objection before the 1st respondent. But the case set up by the petitioner is that no show cause notice alleged to have been issued has been served upon it at any point of time. There is a specific plea in the affidavit filed in support of the writ petition in the following manner:

> "It is submitted that though a reference is made about the show cause notice to the petitioner on 16.7.97 no such notice was received by the petitioner Diagnostic Centre or Medwin Hospitals. The petitioner only came to know when the final notice of withdrawal was issued on 25.11.1997 which is questioned in the present writ petition".

In reply to the specific averments in the affidavit filed in support of the writ petition, it is stated in the counter affidavit "that Respondents had requested to M/s. Jaya Diagnostic and Research Centre Ltd., Hyderabad to furnish certain information vide its letter dated 16.7.1997. It was made clear in that letter that if reply was not received from M/s. Jaya Diagnostic and Research Centre Ltd., Hyderabad within the period specified in the letter, it would be presumed that M/s. Jaya Diagnostic Centre & Research Centre Ltd., Hyderabad was unable to substantiate their continued eligibility to avail and retain the CDECs issued".

The counter affidavit filed by the respondents is totally silent on the question of service of show cause notice mentioned in the impugned order. Nothing is placed before us to satisfy this Court that such a show cause notice has been issued and in fact served upon the petitioner. In the circumstances, we have no difficulty to hold that the petitioner could not have raised this objection namely that the Medwin Hospital is a division of M/s. Jaya Diagnostic and Research Centre Limited before the 1st respondent. The 1st respondent is required to specify himself as to whether Medwin Hospital is a division of M/s. Jaya Diagnostic and Research Centre Limited. It is clear that M/s. Jaya Diagnostic and Research Centre Limited itself would not be entitled to the benefit of the Central Government's policy decision to grant any exemption from the payment of customs duty and other extended benefit unless it is

established that Medwin Hospital is a part and parcel and a division of it. It is a pure question of fact that is required to be decided by the 1st respondent. The 1st respondent did not go into this aspect of the matter obviously for the reason that no such objection has been raised by the petitioner for it did not receive any show cause notice preceding the impugned proceedings
dated 25-11-1997.

That during the hearing of this writ petition voluminous evidence including the annual reports right from 1987-88 ever since formation of the company till 2003-04 are filed for the perusal of the Court in support of the plea that Medwin Hospitals is a division of M/s. Jaya Diagnostic and Research Centre Limited. It is not possible for this Court to examine this matter in detail and record any finding for which purposes evidence may have to be recorded. It is the 1st respondent who is required to decide as to whether Medwin Hospitals is a division and part and parcel of M/s. Jaya Diagnostic and Research Centre Limited which admittedly enjoyed the benefit of the Government's scheme and also various schemes under the police decision dated 01-03-1988 and as well as the benefit of exemption from the payment of customs duty payable on the sophisticated imported equipment. It is made clear that M/s. Jaya Diagnostic and Research Centre itself shall not be entitled to claim any such benefit unless it clearly establishes that Medwin Hospitals is part and parcel and a division of it and complies with other conditions required to be complied under the policy decisions of the Government.

Interests of justice would be met by directing the 1st respondent to treat the impugned order as the show cause notice to which the petitioner shall now submit its explanation within a period of four weeks from today which shall be received by the 1st respondent – the Director General of Health Services. The petitioner shall file its explanation and produce such material as it may wish to do so in support of its claim including the material that is made available for the perusal of this Court during the course of hearing of the writ petition in order to satisfy the 1st respondent that it had fulfilled all the conditions and entitle for the benefit of the Government's policy decision. The 1st respondent shall provide an opportunity of being heard to the petitioner and decide the matter in accordance with law within a period of four

months from the date of the petitioner's explanation to be submitted pursuant to the directions issued herein. There shall be an order accordingly.

The Writ Petition is accordingly disposed of. There shall be no order as to costs.

(B. Sudershan Reddy, J)

22..09..2005

(S. Ananda Reddy, J)

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Note: Furnish CC by 27-0-2005

B/O

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